

**JOHN D. FERRERO**  
STARK COUNTY PROSECUTING ATTORNEY

Stark County Office Building,  
110 Central Plaza South, Suite 510  
Canton, Ohio 44702  
330-451-7897 • Fax 330-451-7965

February 12, 2007

John L. Kurtzman  
Chief Counsel

Kent B. Smith II  
Operations Director

**ASSISTANTS:**  
**CIVIL DIVISION:**  
Kristen Bates Aylward  
Chief  
Deborah A. Dawson  
Assistant Chief  
David M. Bridentstine  
Senior Assistant  
Sharon D. Miller  
Ross A. Rhodes  
Katie W. Chawla  
Gerald T. Yost  
Hope S. Konovsky

**CRIMINAL DIVISION:**  
Denins E. Barr  
Chief  
**Trial Section:**  
Chryssa N. Hartnett  
Assistant Chief  
Jennifer L. Dave  
Senior Assistant  
Jonathan S. Baumoele  
Lisa J. Barr  
Renee M. Watson  
Joseph E. Vance  
Frederic R. Scott  
Michael S. Bickis  
Toni B. Schnellinger  
John A. Burnworth  
**Appellate Section:**  
Ronald Mark Caldwell  
Kathleen O. Tatarsky  
Amy A. Sabino

**INVESTIGATOR:**  
Michael M. Kakoules

**JUVENILE DIVISION:**  
Michelle L. Cordova  
Chief  
Kristen L. Mlinar  
Patricia C. Melia  
Mary G. Warlop  
Darci M. Knight  
Lewis D. Guarnieri

**VICTIM-WITNESS DIVISION:**  
Paula M. Smith  
Director  
Carla F. D'Antonio  
Jennifer L. Maierhofer  
Linda K. Desiato  
Carol A. Mann  
Amy M. Schuster  
Nikki M. Stoffer  
James N. Knight  
Staci L. Manfull  
Dianne K. Hammer

**OFFICE MANAGER:**  
Patty J. Knepper

Kim R. Perez  
Stark County Auditor  
110 Central Plaza South, Ste. 220  
Canton, OH 44702

Re: Requirements for issuance of license for dog kennel  
Our file no. M101.00315

Dear Mr. Perez:

I have before me the e-mail message of Beth Tournay, dated February 7, 2007, requesting a legal opinion with respect to whether dog licenses and kennel licenses may be issued through the office of the dog warden instead of the county auditor. The inquiry also asks whether the auditor may require an affidavit from a dog owner or kennel operator prior to issuing the appropriate license.

**A. Registration of dogs and dog kennels is a duty of the county auditor.**

Annual registration of dogs is required by R.C. 955.01, which provides that applications shall be filed "in the office of the county auditor of the county in which the dog is kept or harbored." Kennel registration is similarly a function of the county auditor's office. §955.04. Where registration and payment are accomplished via the internet, it is the county auditor's function to establish procedures and take actions to accomplish these tasks. §955.013. Also, it is the county auditor who issues certificates of registrations and keeps records of registrations in the county. §955.07. Dog and kennel registrations are not among the duties of a dog warden. §955.12.

Accordingly, applications, payment, certifications, and record keeping for dog and kennel registrations are to be handled by the county auditor. There is no provision for such applications to be processed by or through the county dog warden.

**B. The county auditor may not impose a general requirement of proof of eligibility for dog and kennel licenses.**

The county auditor is a creature of statute, and can exercise only such powers as are expressly delegated by statute or necessary to carry into effect the powers expressly delegated. *State ex rel. Kuntz v. Zangerle* (1935), 130 Ohio St. 84, syllabus paragraph 1. "[T]he duties of the county auditor in the issuance of dog and kennel licenses are ministerial in character." 1955 O.A.G. No. 5953, syllabus paragraph 1. As this office has previously advised, "The only requirement to obtain a [dog or kennel] license is that the proper application be filed." (Our file no. 101.00255, Jan. 3, 2003 [sic].) Thus, the auditor may not impose any across-the-board requirement of

an affidavit, a vendor's license (regardless of the fact that an entity selling dogs may be required to have such a license), a consent to search (keep the premises "open for inspection"), or other extrastatutory test. Note, however, that legislation has been introduced in prior sessions that would significantly alter kennel registration and licensing procedures. SB 342, HB 606 (2005).

**C. Where the county auditor has facts that call into question an applicant's eligibility for a kennel license, the county auditor may require some evidence of eligibility.**

The attorney general has recognized that, on a case-by-case basis, "the County Auditor may require such reasonable proof as the circumstances of the particular case warrants." 1935 O.A.G. No. 4411, quoted in 1955 O.A.G. No. 5953. The attorney general has twice addressed the question of whether a "partnership" application for a dog kennel license might be fictitious – a ruse by which two or more individual dog owners attempt to obtain tags for a number of pet dogs at a lower cost than individual dog licensing – and has concluded that "[w]here the County Auditor has facts which lead him to question the existence of such partnership it could likewise be said to be within his implied powers to require additional proof of the existence of such partnership." *Id.*

In this regard, the applicant might be asked to supply evidence that the applicant is "professionally engaged in the business of breeding dogs for hunting or for sale." Such evidence may take the form of advertisements, sales receipts, a Schedule C, proof of a vendor's license, membership in a breeding association, a Schedule K-1, and so forth. See 1955 O.A.G. No. 5953 ("As to just what additional proof he may require it is obvious that this is a question of fact to be determined from the circumstances of each particular case. It might very well be that he could require more facts in one case than in another case"); 1938 O.A.G. No. 2658 (advertising dogs for sale was evidence that activity was conducted for pecuniary gain).

The decision to withhold a kennel license pending presentation of further evidence, and the decision as to what type of evidence will be satisfactory, cannot be arbitrarily or capriciously made. Therefore, the reasons for initial denial of a license should be documented; the proof required of the applicant should be clearly set out and should not be unduly burdensome; and the applicant should have a reasonable opportunity to submit additional evidence of eligibility.

**D. Where it reliably appears than an applicant is not eligible, the county auditor may refuse to issue the license, or may refer the matter to the dog warden.**

"If the County Auditor has actual knowledge that an application is false and fraudulent it could hardly be contended that it is his duty to issue the license. Certainly we could not be required to assist in the execution of a fraud upon the taxpayers of his county." 1935 O.A.G. No. 4411, quoted with approval in 1955 O.A.G. No. 5953. In most cases, the auditor's information will be based on an investigation by the dog warden, who is the public official charged with determining the validity of dog registrations and, by extension, of kennel licenses. 1955 O.A.G. 5953.

In the performance of their duties under §955.12, county dog wardens possess "the same police powers as are conferred upon sheriffs and police officers ...." R.C. 955.12; see also O.A.G.

No. 86-055; *State v. Durch* (11<sup>th</sup> Dist. 1984), 17 Ohio App.3d 262, 263 (dog-related search of private property must be pursuant to a warrant issued on probable cause). Depending on the result of an investigation by the dog warden, it appears that a kennel license may be denied. Any such action should be appropriately documented. The applicant may challenge a denial by mandamus.

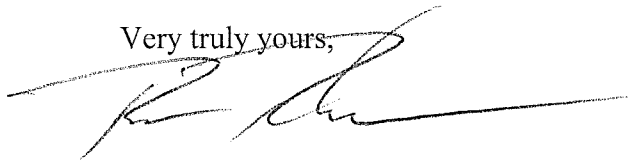
### **Conclusion**

From the foregoing, I have concluded and you are so advised as follows:

1. Applications for dog and kennel registrations, and issuance of certificates of registration, are functions of the county auditor. The county dog warden has no duties with respect to such applications.
2. The county auditor may not impose a general requirement of proof of eligibility for dog and kennel licenses such as affidavits or other proofs. The only requirement to obtain a dog or kennel license is that the proper application be filed.
3. Where the county auditor has facts that call into question an applicant's eligibility for a kennel license, the county auditor may require such reasonable proof as the circumstances of the particular case warrants.
4. The county dog warden is the public official charged with determining the validity of dog registrations and kennel licenses. The county dog warden may investigate and report in cases of suspected ineligibility for kennel licenses. Such investigations are subject to the powers and limitations of any police investigation.
5. Where it reliably appears that an applicant is not eligible, the county auditor may refuse to issue the license. An applicant may challenge such a denial by an action in mandamus.

If you have any further questions in these matters, or if you have additional information that you feel may be relevant, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ross Rhodes', with a long horizontal flourish extending to the right.

Ross Rhodes  
Assistant Prosecuting Attorney